

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-111972-11

Date:

July 06, 2011

## LEGEND

X =

Trust =

A =

State =

Date =

1

Date =

2

Date =

3

Date =

4

Year

1

Year

2

Dear :

This letter responds to a letter dated February 28, 2011, and subsequent correspondence, submitted on X's behalf by its authorized representative, requesting relief pursuant to § 1362(f) of the Internal Revenue Code.

X was incorporated on Date 1 under the laws of State and elected to be an S corporation effective Date 2. Until Date 3, Trust, A's revocable trust, was a qualifying shareholder of an S corporation pursuant to § 1361(c)(2)(A)(i). On Date 3, A died and Trust remained an eligible shareholder for the next two years pursuant to § 1361(c)(2)(A)(ii), until Date 4. X represents that Trust is eligible to be an electing small business trust (ESBT) within the meaning of § 1361(e) effective Date 4. However, the trustee of Trust made no election under § 1361(e)(3) to treat Trust as an ESBT. Therefore, Trust was not a permissible shareholder and, as a result, X's S corporation election terminated on Date 4.

X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make any adjustments the Commissioner may require, consistent with the treatment of X as an S corporation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based on the information submitted and the representations made, we conclude that the termination of X's S corporation election on Date 4 was inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from Date 4 and thereafter, provided X's S corporation election was valid and provided that the election was not otherwise terminated under § 1362(d).

This ruling is contingent upon: (1) the trustee of Trust filing an ESBT election effective Date 4 with the appropriate service center and (2) Trust and its beneficiaries

filing amended returns for Years 1 and 2, to bring Trust into compliance with ESBT requirements. The ESBT election and the amended returns must be filed within 120 days following the date of this letter and a copy of this letter should be attached to such election and returns. If X or its shareholders fail to treat themselves as described above, this ruling is null and void.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed on whether X was or is otherwise eligible to be treated as an S corporation or whether Trust is eligible to be an ESBT.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

Sincerely,

/s/

Richard T. Probst  
Senior Technician Reviewer, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes